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July 11, 2019

Dan Rubins
MuckRock News
Dept MR 76580
411A Highland Avenue
Somerville, MA 02144-2510

Re: Public Records Act Request

Dear Mr. Rubins:

This letter is in response to your request under the California Public Records Act (CPRA, Gov. Code, § 6250 et seq.), dated July 4, 2019, and received July 9, 2019. You request "Brady Lists" of the type set forth in California Penal Code section 832.7(b)(1)(c), pertaining to both sworn and non-sworn personnel for the past ten years.

At this time, we are not providing you any responsive documents, which are exempt from disclosure for the following reasons under the CPRA:

- A preliminary injunction was issued with respect to the County of Ventura regarding a request by the Ventura County Deputy Sheriff's Association (VCDSA) [VCSC case no. 56-2019-00523492-CU-WM-VTA]. Peace officers employed by the District Attorney's Office and the Sheriff's Office are members of the VCDSA. The local trial court subsequently found Penal Code § 832.7 to be prospective only. That ruling is currently pending appeal. Thus, the County of Ventura and its District Attorney's Office are unable to provide any confidential responsive documents pre-dating January 1, 2019, and the public interest in not disclosing the records outweighs the public interest in disclosure. (Gov. Code, § 6255.) For your convenience, both the preliminary injunction and trial court ruling on retroactivity are attached.

No appellate court has ruled on the merits of the issue, rather than merely declining to provide injunctive relief in the case you referenced, *Walnut Creek Police Officers' Association v. City of Walnut Creek*.

- Penal Code section 832.7 expressly applies only to personnel records involving a “sustained finding” of various types of misconduct involving a sworn peace officer or custodial officer. Penal Code section 832.8(b) defines “sustained” as “a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.” Except potentially in limited circumstances in which dissemination is prohibited pursuant to court order under Evidence Code sections 1043 and 1045 (the so-called *Pitchess* process), the District Attorney’s Office is unaware of whether employees of external agencies have sustained findings regarding the requested types of misconduct.
- Penal Code section 832.7 expressly states that the section does not apply to investigations or proceedings conducted by a district attorney’s office concerning the conduct of peace officers or custodial officers, or of an agency or department that employs those officers. (Penal Code, § 832.7(a).)
- Attorney core work product. (Gov. Code, §§ 6254(k), 6276.04; Code Civ. Proc., § 2018.030(a); Penal Code, § 1054.6.)
- Deliberative process privilege. (Gov. Code, §§ 6254(k), 6276.32; Evid. Code, § 1040; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Gomez v. City of Nashua, N.H.* (D.N.H. 1989) 126 F.R.D. 432; *United States v. Fernandez* (9th Cir. 2000) 231 F.3d 1240.)
- Communications with investigating agency protected by official information privilege. (Gov. Code, §§ 6254 (k), 6276.32; Evid. Code, § 1040.)
- Information protected by right to privacy. (Gov. Code, §§ 6254(k), 6255; Cal. Const., art. I, sec. 1; *Central Valley Ch. 7th Step Foundation, Inc. v. Younger* (1989) 214 Cal.App.3d 145, 161-162; *Younger v. Berkeley City Council* (1975) 45 Cal.App.3d 825, 832).
- Drafts. (Gov. Code, § 6254(a).)
- Personnel records. (Gov. Code, §§ 6254(c), 6254(f), 6255; Cal. Const., art. I, § 1; *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 525-526; *Johnson v. Winter* (1982) 127 Cal.App.3d 435.)

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Pursuant to Government Code section 6253.1, to assist you in your request, you may wish to request the records from the individual police agencies in Ventura County, who are aware of whether their employees have the types of sustained findings of misconduct Penal Code section 832.7 contemplates. You may also wish to follow the proceedings on appeal in the Ventura County case referenced above, which is pending in the Second Appellate District. If the local decision is overturned or modified, it may affect our response to your request and you are invited to re-submit your request at such time.

Very truly yours,



CHUCK HUGHES
Chief Deputy District Attorney

WCH:ct

Via email to 76580-87942597@requests.muckrock.com